

DEPARTMENT OF EDUCATION

48 CFR Parts 3401, 3402, 3403, 3404, 3406, 3407, 3408, 3409, 3412, 3416, 3417, 3419, 3424, 3428, 3430, 3431, 3432, 3433, 3437, 3439, 3442, 3443, 3447 and 3452

[Docket ID ED–2023–OFO–0002]

RIN 1890–AA20

Education Acquisition Regulation

AGENCY: Office of Finance and Operations, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary of Education proposes to modify the Department of Education Acquisition Regulation (EDAR) to revise aspects of those regulations that are out-of-date or redundant with other U.S. Department of Education (Department) policies and procedures and to accurately implement the current Federal Acquisition Regulation (FAR) and Department policies.

DATES: We must receive your comments on or before April 3, 2023.

ADDRESSES: Comments must be submitted via the Federal eRulemaking Portal at *regulations.gov*. However, if you require an accommodation or cannot otherwise submit your comments via *regulations.gov*, please contact the program contact person listed under **FOR FURTHER INFORMATION CONTACT**. The Department will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

The Department strongly encourages you to submit any comments or attachments in Microsoft Word format. If you must submit a comment in Adobe Portable Document Format (PDF), we strongly encourage you to convert the PDF to print-to-PDF format or to use some other commonly used searchable text format. Please do not submit the PDF in a scanned format. Using a print-to-PDF format allows the Department to electronically search your submissions.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under “FAQ.”

Privacy Note: The Department’s policy is to make comments received from members of the public available for

public viewing on the Federal eRulemaking Portal at *www.regulations.gov*. Therefore, you should be careful to include in your comments only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT:

April Bolton-Smith, U.S. Department of Education, 400 Maryland Avenue SW, Room 5B243, Washington, DC 20202–4331. Telephone: (202) 453–6317.

Email: *april.bolton-smith@ed.gov*. You may also email your questions to *SAMI_Policy@ed.gov*, but as described above, comments must be submitted via the Federal eRulemaking Portal at *www.regulations.gov*.

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations. Please provide relevant information and data whenever possible, even if there is no specific solicitation of data and other supporting materials in the request for comment. Please do not submit comments that are outside the scope of the specific proposals in this notice of proposed rulemaking (NPRM), as we are not required to respond to such comments.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Department’s programs and activities. Please also feel free to offer for our consideration any alternative approaches to the subjects addressed by the proposed regulations.

During and after the comment period, you may inspect all public comments about these proposed regulations by accessing *Regulations.gov*. You may also inspect the comments in person. To schedule a time to inspect comments, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Assistance to Individuals with Disabilities in Reviewing the

Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the proposed regulations. To schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Background

The uniform regulation for the procurement of supplies and services by Federal Departments and Agencies, the FAR, was promulgated on September 19, 1983 (48 FR 42102). The FAR is codified in title 48, chapter 1, of the Code of Federal Regulations. The Department promulgated the EDAR to implement the FAR on May 26, 1988 (53 FR 19118). The last revision of the EDAR was published in the **Federal Register** on March 8, 2011 (76 FR 12796). The Department published an NPRM on July 16, 2014 (79 FR 41511), but due to changing internal priorities those proposed rules were never finalized.

Significant Proposed Regulations

We discuss substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address proposed regulatory changes that are technical or otherwise minor in effect.

These proposed regulations would amend the EDAR as follows:

Subchapter A—General*Part 3401—ED Acquisition Regulation System*

FAR: FAR part 1 (Federal Acquisition Regulations System) sets forth the purpose, authority, and structure of the FAR, authorizes agency FAR supplements and deviations from the FAR, and discusses career development, contracting authority, and responsibilities.

Current Regulations: The current EDAR contains subparts and sections that paraphrase or are redundant with the FAR, as well as information that is more appropriate for internal policy and procedures. The numbering of the current regulations is inconsistent with the numbering of the FAR.

Proposed Regulations: The Department proposes to revise sections 3401.000, 3401.104, and 3401.602–3 and to remove sections 3401.105, 3401.105–2, and 3401.105–3, 3401.301, 3401.304, and 3401.401, subpart 3401.5 (consisting of sections 3401.501 and 3401.501–2), and sections 3401.670,

3401.670–1, and 3401.670–2.

Additionally, in subpart 3401.6, “Career Development, Contracting Authority, and Responsibilities,” the proposed regulations would redesignate section 3401.670–3 as section 3401.604–70 to be consistent with the FAR 1.604.

Reasons: The proposed changes remove sections that are unnecessary and redundant with the FAR.

Additionally, on March 16, 2011, section 1.604 was added to the FAR. This proposed change would update the EDAR to be consistent with the FAR numbering scheme.

Part 3402—Definitions of Words and Terms

FAR: FAR part 2 (Definitions of Words and Terms) defines words and terms that are frequently used in the FAR.

Current Regulations: The current EDAR defines the terms Chief Acquisition Officer (CAO), Chief of the Contracting Office (COCO), Contracting Officer’s Representative (COR), Department of ED, Head of the Contracting Activity (HCA), Performance-Based Organization (PBO), and Senior Procurement Executive (SPE). The current EDAR does not define “requiring activity.” The current EDAR contains a separate section 3402.101–70 for abbreviations and acronyms.

Proposed Regulations: The Department proposes to remove the definitions of “Chief Acquisition Officer” and “Contracting Officer’s Representative” and to add a definition of “requiring activity.” Additionally, the Department proposes to clarify that the Head of Contracting for Federal Student Aid (FSA) Acquisition is the Executive Director, Acquisition Directorate. Finally, the Department proposes to remove section 3402.101–70 (Abbreviations and acronyms) as a stand-alone section and to relocate the acronyms to be part of the definitions.

Reasons: We remove the terms “Chief Acquisition Officer” and “Contracting Officer’s Representative” to eliminate duplication with the FAR, where these terms are defined. We include a definition of “requiring activity” because this term is used in a proposed new clause that addresses requirements under the Family Educational Rights and Privacy Act (FERPA).

Part 3403—Improper Business Practices and Personal Conflicts of Interest

FAR: FAR part 3 (Improper Business Practices and Personal Conflicts of Interest) regulates standards of conduct, gratuities to Government personnel, reports of suspected antitrust violations,

contingent fees, and contracts with Government employees or organizations owned or controlled by them.

Current Regulations: The current EDAR requires Department personnel to report violations of the gratuities clause, antitrust violations, and misrepresentation or violation of the covenant against contingent fees.

Proposed Regulations: The Department is proposing to add section 3403.104–7 to identify the Senior Procurement Executive (SPE) as the agency head for the purposes of FAR 3.104–7(d)(2)(ii)(B) and to add section 3403.204, revise section 3403.602, and add subparts 3403.7 and 3403.9 to identify the SPE as the agency head’s designee for the purposes of FAR 3.204, 3.602, 3.704, 3.705, 3.905, and 3.906. The Department is proposing to remove section 3403.101–3 and to renumber current section 3403.409 to proposed section 3403.405.

Reasons: The proposed revisions remove a section of the EDAR that is more appropriate for internal policy guidance and improve administrative efficiency by identifying the official delegated the authority to provide exceptions and sign determinations identified in FAR 3.1, 3.2, 3.6, 3.7, and 3.9.

Part 3404—Administrative and Information Matters

FAR: FAR part 4 (Administrative and Information Matters) sets forth requirements for contract execution, documentation, retention, and reporting.

Current Regulations: The current EDAR does not address this FAR part.

Proposed Regulations: The Department proposes to add part 3404, “Administrative Matters,” to subchapter A, consisting of sections 3404.000 and 3404.001 and subparts 3404.4, 3404.7, and 3404.8. In section 3404.001, we propose to define “Federal record” and “records inventory.” The Department proposes to include sections 3404.470 and 3404.470–1 in proposed subpart 3404.4 to prescribe the use of the clause at 3452.204–71, “Contractor security vetting requirements,” in all solicitations and contracts when it is anticipated that contractor employees will have access to proprietary or sensitive Department information. The Department proposes to add subpart 3404.7, consisting of sections 3404.710 and 3404.770, to prescribe the use of the clause at 3452.204–70, “Records management,” in all solicitations and contracts where contractors will receive, create, work with, or otherwise handle Federal records. The Department proposes to add subpart 3404.8,

consisting of sections 3404.804 and 3404.804–5, to require the contracting officer to ensure that the contractor has provided written affirmation that all Federal records under the contract have been transferred to the Department prior to closeout of the contract file.

Reasons: These additions are necessary to provide contractors with the personnel security screening requirements for contractor employees who will require access to proprietary or sensitive Department information, including, but not limited to, “Controlled Unclassified Information” as defined in 32 CFR part 2002, Department information technology (IT) systems, and Department facilities or space, or who will perform duties in a school or location where children are present. Additionally, these additions are necessary to provide contractors guidance on the handling of Federal records, often containing personally identifiable information (PII), both during and after performance of contracts.

Subchapter B—Competition and Acquisition Planning

Part 3406—Competition Requirements

FAR: FAR part 6 (Competition Requirements) regulates how agencies compete various contract actions.

Current Regulations: The current EDAR does not identify the agency head for purposes of FAR 6.302–2 (Unusual and compelling urgency).

Proposed Regulations: The proposed changes would add section 3406.302–2 to identify the SPE as the agency head’s designee for purposes of FAR 6.302–2(d)(1)(ii) and (d)(2)(ii).

Reasons: To improve administrative efficiency, the proposed changes would identify the agency head for purposes of FAR 6.302–2(d)(1)(ii) and (d)(2)(ii).

Part 3407—Acquisition Planning

FAR: FAR part 7 (Acquisition Planning) sets forth requirements for pre-solicitation activities that must be addressed by the Government, identifies analysis of requirements for contractor versus Government performance, and identifies how to determine if work is inherently governmental.

Current Regulations: The current EDAR does not address this part of the FAR.

Proposed Regulations: The Department proposes to add part 3407, “Acquisition Planning,” to subchapter B to identify the SPE as the agency head’s designee for the purposes of FAR 7.103.

Reasons: To improve administrative efficiency, the proposed changes to the regulations would clearly identify the

appropriate official for making determinations under FAR 7.1.

PART 3408—Required Sources of Supplies and Services

FAR: FAR part 8 (Required Sources of Supplies and Services) mandates certain sources and details how agencies must use those sources.

Current Regulations: The current EDAR requires a printing clause in section 3408.870 to clarify when the printing clause at 3452.208–71 is required.

Proposed Regulations: The Department proposes to remove section 3408.870.

Reasons: Since the EDAR was last updated in 2011, there has been a significant reduction in printing by contractors. As such, the clause is not being used by the contracting activities and is no longer necessary.

Part 3409—Contractor Qualifications

FAR: FAR part 9 (Contractor Qualifications) prescribes policies, standards, and procedures for determining whether prospective contractors are responsible.

Current Regulations: The current section 3409.507 of EDAR includes a section that includes a contractor certification related to conflict of interest (COI) with regard to contracts and orders above the simplified acquisition threshold.

Proposed Regulations: The Department proposes to revise section 3409.507–2 and remove section 3409.570.

Reason: The proposed changes would revise section 3409.507–2 to remove text in the instruction to contracting officers that is inaccurate and remove section 3409.570 because it is unnecessary, as COI requirements are sufficiently covered in FAR part 9.

Part 3412—Acquisition of Commercial Products and Commercial Services

FAR: FAR part 12 (Acquisition of Commercial Products and Commercial Services) prescribes policies and procedures unique to the acquisition of commercial products, including commercial components, and commercial services.

Current Regulations: The current EDAR permits the HCA to approve waivers in accordance with FAR 12.302(c).

Proposed Regulations: The Department proposes to add section 3412.301 to prescribe the use of the clause at 3452.224–73, “Protection of student privacy in compliance with FERPA,” in all solicitations or contracts, including those for the acquisition of

commercial products and commercial services, when a requiring activity has provided notification that the contractor will collect or receive access to PII from student education records in connection with carrying out an audit, evaluation, study, compliance review, or other Federal law enforcement activity on behalf of the Department.

Reason: The proposed change to the regulations would clarify that the FERPA clause at 3452.224–73 applies to the acquisition of commercial products and commercial services.

Part 3416—Types of Contracts

FAR: FAR part 16 (Types of Contracts) describes the various contract types and consideration in determining the type of contract to use for a particular acquisition.

Current Regulations: The current EDAR has outdated cost principles citations in section 3416.307 that refer to the Office of Management and Budget (OMB) cost principles that were rescinded with the issuance of 2 CFR part 200 (Uniform Guidance). Additionally, the current EDAR incorrectly states that an award term that is earned is affected by unilateral modification.

Proposed Regulations: The Department proposes to update the outdated citations in section 3416.307 and to revise section 3416.470(f)(2) to require bilateral modification to extend a contract for an earned award term period. Additionally, the Department proposes to add subpart 3416.5, to include section 3416.505, to identify the Deputy Director of Contracts and Acquisition Management (CAM) as the agency head for purposes of FAR 16.505(b)(8).

Reasons: These revisions would update outdated citations and correct errors in the current EDAR, as well as identify the Department’s task-order and delivery-order ombudsman, which is required in FAR 16.505(b)(8).

Part 3417—Special Contracting Methods

FAR: FAR part 17 (Special Contracting Methods) includes requirements for options and interagency acquisitions under the Economy Act.

Current Regulations: The Department proposes to add section 3417.104 to identify the SPE as the agency head for the purposes of FAR 17.104(b).

Reasons: The changes are necessary to clearly identify the appropriate official for making determinations under FAR 17.104(b).

Subchapter D—Socioeconomic Programs

Part 3419—Small Business Programs

FAR: FAR part 19 (Small Business Programs) describes requirements for and the availability of contracting preference programs for small businesses.

Current Regulations: The current regulations identify regulatory flexibilities afforded to Federal Student Aid (FSA).

Proposed Regulations: The Department proposes to correct the location of the Office of Small and Disadvantaged Business Utilization in section 3419.201–70 and to align the numbering of section 3419.502–4 to the FAR, resulting in a change from section 3419.502–4 to section 3419.502–70. Additionally, the Department proposes to add section 3418.502–8 and subpart 3419.8, to include section 3419.810, to identify the SPE as the agency head for the purposes of FAR 19.502–8 and to identify the HCA as the agency head for the purposes of FAR in 19.812(d).

Reasons: The proposed changes would update and correct inaccuracies in current sections of part 3419 and would identify the appropriate official for making determinations under FAR 19.5 and 19.8.

Part 3424—Protection of Privacy and Freedom of Information

FAR: FAR part 24 (Protection of Privacy and Freedom of Information) prescribes policies and procedures that apply to requirements of the Privacy Act of 1974, as amended (Privacy Act), OMB Circular A–130, and the Freedom of Information Act.

Current Regulations: The current EDAR does not address the statutory requirement that the Department comply with FERPA requirements to safeguard the privacy of student education records.

Proposed Regulations: The Department proposes to add subpart 3424.7 to prescribe the use of the clause at 3452.224–73, “Protection of student privacy in compliance with FERPA,” in all solicitations and contracts, including those for the acquisition of commercial products and commercial services, where a contractor will collect or receive access to PII from student education records in connection with carrying out an audit, evaluation, study, compliance review, or other Federal law enforcement activity on the behalf of the Department.

Reasons: This addition is necessary to ensure that the Department complies with FERPA requirements.

Subchapter E—General Contracting Requirements

Part 3428—Bonds and Insurance

FAR: FAR part 28 (Bonds and Insurance) regulates the appropriate use and requirements for bonds and insurance under Federal contracts.

Current Regulations: The current EDAR, section 3428.311–2 (Agency solicitation provisions and contract clauses), requires a clause specifying when insurance is mandatory.

Proposed Regulation: The Department proposes to clarify in section 3428.311–2 that the clause is required in all solicitations and contracts when a cost-reimbursement contract is contemplated.

Reasons: The proposed change is necessary to remove ambiguity about when the clause is required.

Part 3430—Cost Accounting Standards Administration

FAR: FAR part 30 (Cost Accounting Standards Administration) includes sections on the administration of contractor financial systems and responsibility for disclosure.

Current Regulations: The current EDAR does not address this part of the FAR.

Proposed Regulations: The Department proposes to add part 3430, “Cost Accounting Standards Administration,” to include section 3430.201–5, to identify the SPE as the head of the agency for purposes of FAR 30.201–5(a) and (b).

Reasons: The proposed change to the regulation would clearly identify the appropriate official for making determinations under FAR 30.201–5.

Part 3431—Contract Cost Principles and Procedures

FAR: FAR part 31 (Contract Cost Principles and Procedures) includes sections regulating costs under contracts with commercial, educational, and nonprofit organizations.

Current Regulations: The current EDAR does not address this part of the FAR.

Proposed Regulations: The Department proposes to add part 3431, “Contract Cost Principles and Procedures.” Within part 3431, the Department proposes to add subpart 3431.1, consisting of section 3431.101, to identify the SPE as the agency head’s designee for the purposes of FAR 31.101 and to add subpart 3431.2, to include section 3431.205–71, to prescribe the use of the clause at 3452.231–71 (Invitational travel costs) to prohibit the use of contract funds to pay for

noncontractor travel unless authorized by the contracting officer in advance.

Reasons: The proposed changes to the regulations would clearly identify the appropriate official for making determinations under FAR 31.101 and 31.205–6 and would ensure adequate control over contract funds used to pay for noncontractor travel.

Part 3432—Contract Financing

FAR: FAR part 32 (Contract Financing) regulates the types of financing the Government may make available to contractors, including advance payments.

Current Regulations: The current EDAR designates the HCA as the official authorized to approve types of financing in subpart 3432.4 (Advance Payments for Non-Commercial Items) and section 3432.705–2 (Clauses for limitation for cost or funds), which prescribes the use of the clause at 3452.232–70 (Limitation of cost or funds) and the provisions in the clause at 3452.232–71 (Incremental funding) for cost-reimbursement contracts.

Proposed Regulations: The Department proposes to add sections 3432.000 (Scope of part), 3432.006, and 3432.006–3 to identify Department personnel responsibilities and procedures that must be followed when there is any suspected instance of fraud involved in payment requests.

The Department also proposes to redesignate sections 3432.705 and 3432.705–2 to sections 3432.706 and 3432.706–2, respectively, and to designate paragraphs (a) and (b) in the current section 3432.705–2 to paragraphs (c) and (d) in the redesignated section 3432.706–2.

Additionally, the Department proposes to add paragraph (e) to section 3432.705–2 to permit a contracting officer to add the clause at 3432.232–72 that allows for the incremental funding of fixed price contracts when certain conditions are met.

Reasons: The proposed changes identify the appropriate official and procedure to report suspected instances of fraud involved in payments requests. The proposed changes also align the EDAR to the proper FAR sections. Additionally, the proposed changes address a mission-critical need to incrementally fund fixed price, severable service contracts when certain conditions are met.

Part 3433—Protests, Disputes, and Appeals

FAR: FAR part 33 (Protests, Disputes, and Appeals) regulates the Government’s actions when a protest is filed with the agency or the U.S.

Government Accountability Office and when disputes occur under contracts.

Current Regulations: The current EDAR designates the HCA as the official authorized to approve a determination to continue with performance after receipt of a protest.

Proposed Regulations: The Department proposes to revise section 3433.103 to clarify that the contracting officer should receive the agency-level protest unless the protestor requests an independent review. Requests for independent reviews would be decided by the HCA, or SPE if the HCA is not at least one level above the contracting officer. These proposed changes would also clarify that the independent review is an alternative to the contracting officer’s decision and not an appeal, and direct contracting officers to include the clause at 3452.233–70 (Agency level protests) in all solicitations.

Reasons: These proposed changes would clarify the Department’s process for agency level protests and, consistent with FAR 33.103(d)(4), they designate the Department officials who are responsible for conducting the review and clarify that the independent review is an alternative to the contracting officer’s decision and not an appeal.

Subchapter F—Special Categories of Contracting

Part 3437—Service Contracting

FAR: FAR part 37 (Service Contracting) regulates various types of service contracts and performance-based acquisition.

Current Regulations: The EDAR currently contains section 3437.270 (Services of consultants clauses), which prescribes the use of the clause at 3452.237–70 (Services of consultants) in all cost-reimbursement contracts and solicitations. This clause requires the contractor to obtain the contracting officer’s written approval to use certain consultants under a cost-type contract.

Proposed Regulations: The Department proposes to add section 3437.204 and revise section 3437.270 within subpart 3437.2 and to add section 3437.601 to subpart 3437.6. Proposed section 3437.204 would identify the HCA as the agency head for the purposes of FAR 37.204. The Department proposes to revise section 3437.270 to clarify that the clause at 3452.237–70 (Services of consultants) is to be used in all solicitations and resultant cost-reimbursements contracts for consultant services that do not provide services to FSA. The Department proposes to add section 3437.601 to establish the Department’s policy that all new service contracts be

performance-based, unless approved by the HCA.

Reasons: These changes would clearly identify the official responsible for the guidelines for determining the availability of personnel for the purposes of FAR 37.204, add necessary language to clarify that the Services of Consultants clause should only be included when the solicitation or resultant contract involves consultant services, and clarify current practice to establish the minimum requirements to be contained in any new service contract.

Part 3439—Acquisition of Information Technology

FAR: FAR part 39 (Acquisition of Information Technology) regulates the acquisition of information technology.

Current Regulations: The current EDAR contains multiple information technology initiatives and standards requirements for internet Protocol version 6 and security requirements.

Proposed Regulations: The Department proposes to revise the heading of section 3439.702 to align with updated clause language and to require the use of the clause at 3452.239–71 (Department information security and privacy requirements) in all solicitations and contracts. The Department proposes to remove section 3439.703.

Reasons: Current section 3439.702 applies only when contractor employees will have access to Department-controlled facilities or space, or when the work involves the design, operation, repair, or maintenance of information systems and access to sensitive but classified information. To ensure that Department information security and privacy requirements are broadly applied to all contracts involving information technology, the proposed change would require that contracting officers use the clause at 3452.239–71 in all solicitations and contracts. Current section 3439.703 prescribes the use of the clause at 3452.239–73, which requires Federal Desktop Core Configuration (FDCC) compatibility in all solicitations and contracts where software will be developed or operated on any system using the FDCC. The FDCC has been replaced with the United States Government Configuration Baseline (USGCB). The requirement to comply with the USGCB is included in the EDAR clause at 3452.239–71; therefore, section 3452.239–73 is obsolete and no longer required.

Subchapter G—Contract Management

Part 3442—Contract Administration and Audit Services

FAR: FAR part 42 (Contract Administration and Audit Services) requires use of a contractor performance information system and contracting monitoring; it also governs other contract administration functions.

Current Regulations: The current EDAR contains sections on contract monitoring and the accessibility of meetings, conferences, and seminars to persons with disabilities.

Proposed Regulations: The Department proposes to revise section 3442.7101 in subpart 3442.71 to clarify the use of the clause at 3452.242–73 (Accessibility of meetings, conferences, and seminars to persons with disabilities) is mandatory in all solicitations and contracts where conferences are contemplated.

Reasons: The current regulation is ambiguous as to the application of the accessibility clause, and this change would clarify when it must be used.

Part 3443—Contract Modifications

FAR: FAR part 43 (Contract Modifications) prescribes policies and procedures for preparing and processing contract modifications for all types of contracts.

Current Regulations: The current EDAR contains a section requiring contracting officers to insert a clause substantially the same as the clause at 3452.243–70 (Key personnel) in all solicitations and resultant cost-reimbursement contracts in which it is essential for the contracting officer to be notified of changes to key personnel.

Proposed Regulations: The proposed changes to section 3443.107 would remove the limitation of this clause to cost-reimbursement contracts.

Reasons: This change would allow contracting officers to be notified of key personnel changes in all contracts, where appropriate.

Part 3447—Transportation

FAR: FAR part 47 (Transportation) includes sections regulating transportation-related services, transportation in supply contracts, and transportation by U.S. flag carriers and vessels.

Current Regulations: The current EDAR specifies in section 3447.701 that the contracting officer must use clause 3452.247–70 (Foreign travel) in all solicitations and resultant cost reimbursement contracts.

Proposed Regulations: The Department proposes to revise section 3447.701 to clarify that the contracting

officer must insert the clause at 3452.247–70 (Foreign travel) in all solicitations and resultant cost-reimbursement contracts where foreign travel is contemplated.

Reasons: This change would clarify when the contracting officer must use the clause at 3452.247–70.

Subchapter H—Clauses and Forms

Part 3452—Solicitations Provisions and Contract Clauses

FAR: FAR part 52 (Solicitation Provisions and Contract Clauses) is the part of the FAR containing all FAR provisions and clauses required or recommended for inclusion in solicitations and contracts, as prescribed in the preceding parts of the FAR.

Current Regulations: The current EDAR includes in part 3452, “Solicitation Provisions and Contract Clauses,” text for 30 provisions and clauses, all of which are prescribed in the preceding parts of EDAR.

Proposed Regulations: The Department proposes to add section 3452.204–70 to implement records management guidance provided by the National Archives and Records Administration (NARA) consistent with applicable law and regulations; add section 3452.204–71 as a stand-alone clause that identifies contractor security vetting requirements (formally included with IT security requirements); revise section 3452.216–71(e) to require bilateral modifications rather than unilateral modifications in cases of earned award term periods; revise sections 3452.224–71 and 3452.224–72 to reflect updated requirements with regard to research activities involving human subjects; add section 3452.224–73 to ensure the protection of student privacy in compliance with FERPA; add section 3452.231–71 to identify invitational travel as an unallowable cost without written consent; add section 3452.232–72 to permit incremental funding of fixed price contracts; add section 3452.233–70 to clarify the process for agency-level protests; revise section 3452.239–70 to conform with OMB policy on completing the transition to internet Protocol version 6 (IPv6); revise section 3452.239–71 to separate out contractor security vetting requirements and to update Department IT security requirements; and revise section 3452.243–70 to allow its application in all solicitations and contracts.

Additionally, the Department proposes to remove sections 3452.208–71, 3452.239–72, and 3452.239–73.

Reasons: The proposed additions and revisions to this part of the EDAR are

consistent with the changes to the prescription language in the preceding parts and would update the provisions and clauses to more accurately reflect current regulations and policy.

Specifically, section 3452.204–70 is proposed to comply with NARA regulations to ensure that the Department has proper oversight of Department records that are in the possession of Department contractors, including inventorying all records that are created, managed, and stored by Department contractors, as well as ensuring proper disposition of the records when the contract ends.

Section 3452.204–71 is proposed as a stand-alone clause because it was previously combined with IT security requirements. We are proposing to separate the two clauses because not all contracts that involve IT security also involve personnel security (and vice versa). As such, it is more appropriate to convey the requirements in separate clauses.

We are proposing to revise section 3452.216–71(e) because the current EDAR incorrectly states that an award term that is earned is affected by unilateral contract modification. This proposed revision to the clause would correct this error and would require bilateral modification.

The proposed revisions to sections 3452.224–71 and 3452.224–72 are necessary to update the clause language to conform with updates to Human Subject Research regulations found in 34 CFR part 97.

Section 3452.224–73 is proposed to ensure that contractors are advised of their obligations to protect student privacy in compliance with FERPA.

Section 3452.231–71 is proposed to ensure that travel by non-contractor employees is permissible and in accordance with Department policy and the Federal Travel Regulations.

Section 3452.232–72 is proposed because the Department often does not have sufficient funding during a continuing resolution to fully fund mission critical and high dollar fixed price contracts. This proposed clause is required to allow the Department to incrementally fund fixed-price, severable service contracts in a way that clearly delineates the rights and responsibilities of the Government and the contractor in compliance with the Anti-Deficiency Act.

Section 3452.233–70 is proposed because the current EDAR does not clearly identify the process for agency-level protests or clarify that the independent review, as specified in the FAR, is an alternative to the contracting officer's decision and not an appeal.

We are proposing revisions to section 3452.239–70 because the current clause is not in compliance with current OMB policy on the requirement to transition to IPv6.

We are proposing revisions to section 3452.239–71 because the clause previously contained personnel security requirements, which are now proposed in a separate, stand-alone clause. Additionally, the proposed clause would update outdated IT cybersecurity requirements and would implement a requirement that contractors not only comply with the Department's current cybersecurity and privacy requirements at the time of contract award, but also future requirements. This is necessary because of the ever evolving and changing landscape with regard to cybersecurity requirements, and to ensure that contractors that do business with the Department are keeping current with these requirements to protect the Department's data and information.

We are proposing revisions to section 3452.243–70 to give contracting officers the flexibility of including the key personnel clause in all solicitations and contracts that require it, rather than limiting it to only non-commercial contracts.

Additionally, section 3452.208–71 is no longer required because there has been a significant reduction in printing by contractors since the EDAR was last updated. This clause is not currently being used by the Contracting Activities.

Also, section 3452.239–72 is no longer required because the Department's information security and privacy requirements are now included in all contracts and solicitations (per the revised section 3439.702). Previously, section 3452.239–71 provided notice to offerors of the Department's security requirements and section 3452.239–72 prescribed the requirements. Because the requirements are now in section 3452.239–71, current section 3452.239–72 is unnecessary.

Finally, section 3452.239–73 is no longer required because the FDCC has been replaced with the USGCB. The requirement to comply with the USGCB is included in the EDAR clause at 3452.239–71; therefore, section 3452.239–73 is obsolete and no longer required.

Executive Orders 12866 and 13563 Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is “significant” and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of

Executive Order 12866 defines a “significant regulatory action” as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an “economically significant” rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

We have reviewed these proposed regulations under Executive Order 12866 and have determined that this proposed regulatory action is not a significant regulatory action subject to review by OMB under section 6(3)(A) of Executive Order 12866.

We have also reviewed these proposed regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency “to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.” The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include “identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.”

We issue these proposed regulations only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on an analysis of anticipated costs and benefits, we believe that these proposed regulations are consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

Potential Costs and Benefits

We have reviewed the changes proposed in this NPRM in accordance with Executive Order 12866 and do not believe that these changes would generate a considerable increase in burden. Most changes proposed in this NPRM either remove parts of the EDAR that are redundant or duplicate the FAR; identify the proper “agency head” designee for certain sections of the FAR; or make minor revisions to improve clarity and application. Most of these proposed changes would not generate any costs.

The NPRM includes a proposed change to revise the Human Subjects Research clause and prescription to comply with updated policy and regulations on human subject research. This change would not result in significant costs; its impact would be limited to contracts that include, or are likely to include, research activities involving human subjects covered under 34 CFR part 97.

We also propose to revise the internet Protocol version 6 (IPv6) clause to conform with an OMB policy on completing the transition to IPv6. The proposed change to the clause is not material and would not generate any significant costs. Application will be limited to solicitations and resulting contracts for hardware and software.

We propose to add a contract closeout requirement to require that the contracting officer receive written affirmation that all Federal records have been transferred to the Department. Because this would not change the

underlying requirement regarding final disposition of all Government-Owned/ Contractor-Held Federal records, its impact would be limited to the requirement that the contracting officer receive written affirmation of such disposition.

We also propose to add seven new contract clauses. Four of these (requiring compliance with information security and privacy requirements; requiring compliance with contractor security vetting requirements, including undergoing a personnel security screening; establishing requirements and safeguards for contractors that collect or receive PII from student education records to ensure compliance with FERPA; and permitting incremental funding of fixed price contracts) are already used in contracts. As a result, these four changes would not result in any added burden or costs.

The NPRM includes three new clauses. They are:

- A clause to require the contractor to comply with records management laws, regulations, and policies, including safeguarding Federal records and transferring Federal records back to the Department at the end of the contract;
- A clause to require prior approval for noncontractor invitational travel; and
- A clause to provide notice to the contractor on where to submit an agency-level protest and advisement to the public that a protester has the right to request an independent review.

The records management clause requires the contractor to comply with all applicable records management laws and regulations, as well as NARA records policies, including the Federal Records Act (44 U.S.C. chapters 21, 29, 31, and 33), NARA regulations at 36 CFR chapter XII, subchapter B, including 36 CFR part 1236, and those policies associated with the safeguarding of Federal records covered by the Privacy Act. While some of these requirements are already being applied to contracts in practice, there are some new requirements, in particular that Department staff will need to maintain Records Inventories. The nature and the substance of increased burden would not be significant.

The noncontractor invitational travel clause would prohibit the use of contract funds to pay for noncontractor invitational travel unless authorized by the contracting officer in advance. This would ensure adequate control over contract funds used to pay for noncontractor invitational travel. The impact of this proposed change would be minimal. The agency-level protest clause would provide notice to the

contractor on where to submit an agency-level protest and would advise the public that a protester has the right to request an independent review. These proposed changes would not result in any significant costs or burden. The right to request an independent review is already codified in the FAR.

Many of the proposed changes would result in benefits to the public. Because the EDAR has not been updated in more than ten years, it contains outdated and unused clauses.

Additionally, it has citations to outdated laws and regulations and contains sections that are duplicative of the FAR or that are more appropriate for internal procedures and policies. The proposed changes would streamline the EDAR, make it easier to read, and would reflect current and updated requirements.

Regulatory Flexibility Act Certification

The Secretary certifies that this proposed regulatory action would not have a significant economic impact on a substantial number of small entities. The proposed regulations would not directly regulate any small entities. For this reason, these proposed regulations would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The regulatory action does not contain any information collection requirements.

Intergovernmental Review

These regulations are not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

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List of Subjects

48 CFR Parts 3401, 3402, 3404, 3406, 3407, 3408, 3409, 3412, 3416, 3417, 3424, 3428, 3430, 3431, 3437, 3439, 3444, 3447, and 3452

Government procurement.

48 CFR Part 3403

Antitrust, Conflict of interest, Government procurement.

48 CFR Part 3419

Government procurement, Small businesses.

48 CFR Parts 3432, 3442, and 3443

Accounting, Government procurement.

48 CFR Part 3433

Administrative practice and procedure, Government procurement.

Miguel A. Cardona,
Secretary of Education.

Accordingly, the Secretary proposes to amend title 48 of the Code of Federal Regulations, chapter 34 as follows:

PART 3401—ED ACQUISITION REGULATION SYSTEM

- 1. The authority citation for part 3401 continues to read as follows:

Authority: 5 U.S.C. 301 and 20 U.S.C. 1018a.

- 2. Revise section 3401.000 to read as follows:

3401.000 Scope of part.

This part establishes a system of Department of Education (Department) acquisition regulations, referred to as the Department of Education Acquisition Regulation (EDAR), for the codification and publication of policies and procedures of the Department that implement and supplement the Federal Acquisition Regulation (FAR).

- 3. Revise section 3401.104 to read as follows:

3401.104 Applicability.

(a) The FAR and the EDAR apply to all Department contracts, as defined in FAR part 2, except where expressly excluded. The EDAR implements or supplements the FAR and incorporates, together with the FAR, Department policies, procedures, contract clauses,

solicitation provisions, and forms that govern the contracting process or otherwise control the relationship between the Department, including its sub-organizations, and contractors or prospective contractors.

(b) The statute at 20 U.S.C. 1018a provides the PBO with procurement authority and flexibility associated with sections (a)–(l) of the statute.

3401.105, 3401.105–2, and 3401.105–3 [Removed]

- 4. Remove sections 3401.105, 3401.105–2, and 3401.105–3.

3401.301 [Removed]

- 5. Remove section 3401.301.

3401.304 [Removed]

- 6. Remove section 3401.304.

3401.401 [Removed]

- 7. Remove section 3401.401.

Subpart 3401.5 [Removed]

- 8. Remove subpart 3401.5, consisting of sections 3401.501 and 3401.501–2.
■ 9. Revise section 3401.602–3 to read as follows:

3401.602–3 Ratification of unauthorized commitments.

(a) *Definitions.* As used in this subpart, commitment includes issuance of letters of intent and arrangements for free vendor services or use of equipment with the promise or the appearance of commitment that a contract, modification, or order will, or may, be awarded.

(b) *Policy.* (1) The Government is not bound by agreements with, or contractual commitments made to, prospective contractors by individuals who do not have delegated contracting authority or by contracting officers acting in excess of the limits of their delegated authority. Unauthorized commitments do not follow the appropriate process for the expenditure of Government funds. Consequently, the Government may not be able to ratify certain actions, putting a contractor at risk for taking direction from a Federal official other than the contracting officer. See FAR 1.602–1. Government employees responsible for unauthorized commitments are subject to disciplinary action.

(2) The HCA must review and sign or reject all ratification requests, with the exception that the Chief of the Contracting Office is authorized to review and sign or reject ratification requests for unauthorized commitments up to \$25,000.

3401.670 [Removed]

- 10. Remove section 3401.670.

3401.670–1 [Removed]

- 11. Remove section 3401.670–1.

3401.670–2 [Removed]

- 12. Remove section 3401.670–2.

3401.670–3 [Redesignated as 3401.604–70]

- 13. Redesignate section 3401.670–3 as section 3401.604–70.

PART 3402—DEFINITIONS OF WORDS AND TERMS

- 14. The authority citation for part 3402 continues to read as follows:

Authority: 5 U.S.C. 301 and 20 U.S.C. 1018a.

- 15. Amend section 3402.101 by:
■ a. Removing the definition of “Chief Acquisition Officer”.
■ b. Revising the definition of “Chief of the Contracting Office”.
■ c. Removing the definition of “Contracting Officer’s Representative”.
■ d. Revising the definition of “Head of the Contracting Activity”.
■ e. Adding a definition of “Requiring activity” in alphabetical order.

The revisions and addition read as follows:

3402.101 Definitions.

* * * * *

Chief of the Contracting Office or *COCO* means an official serving in the contracting activity (Contracts and Acquisition Management (CAM) or Federal Student Aid (FSA) Acquisitions) as the manager of a group that awards and administers contracts for a principal office of the Department. *See also* definition of *Head of the Contracting Activity* or *HCA* in this section.

* * * * *

Head of the Contracting Activity or *HCA* means those officials within the Department who have responsibility for and manage an acquisition organization and usually hold unlimited procurement authority. The Executive Director, Acquisitions Director, Federal Student Aid, is the HCA for FSA. The Director, Contracts and Acquisitions Management (CAM), is the HCA for all other Departmental program offices and all boards, commissions, and councils under the management control of the Department.

* * * * *

Requiring activity means the principal office charged with meeting or supporting a mission and delivering requirements. The requiring activity is responsible for obtaining funding or developing the program objectives. The requiring activity may also be the organizational unit that submits a

written requirement or statement of need for services required by a contract.

* * * * *

3402.101–70 [Removed]

- 16. Remove section 3402.101–70.

PART 3403—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

- 17. The authority citation for part 3403 continues to read as follows:

Authority: 5 U.S.C. 301.

3403.101–3 [Removed]

- 18. Remove section 3403.101–3.
- 19. Add sections 3403.104 and 3403.104–7 to read as follows:

3403.104 Procurement integrity.

3403.104–7 Violations or possible violations.

(d)(2)(ii)(B) The Senior Procurement Executive (SPE) is the agency head for the purposes of FAR 3.104–7(d)(2)(ii)(B).

- 20. Add section 3403.204 to read as follows:

3403.204 Treatment of violations.

(a) The SPE is the agency head’s designee for the purposes of FAR 3.204.

3403.409 [Redesignated as 3403.405]

- 21. Redesignate section 3403.409 as section 3403.405.
- 22. Revise section 3403.602 to read as follows:

3403.602 Exceptions.

The SPE is the agency head’s designee for the purposes of FAR 3.602.

- 23. Add subpart 3403.7 to read as follows:

Subpart 3403.7—Voiding and Rescinding Contracts

Sec.

3403.704 Policy.

3403.705 Procedures.

Subpart 3403.7—Voiding and Rescinding Contracts

3403.704 Policy.

(a) The Senior Procurement Executive (SPE) is the agency head’s designee for the purposes of FAR 3.704.

3403.705 Procedures.

(a) *Reporting.* The SPE is the agency head’s designee for the purposes of FAR 3.705.

- 24. Add subpart 3403.9 to read as follows:

Subpart 3403.9—Whistleblower Protections for Contractor Employees

Sec.

3403.905 Procedures for investigating complaints.

3403.906 Remedies.

Subpart 3403.9—Whistleblower Protections for Contractor Employees

3403.905 Procedures for investigating complaints.

(c) The Senior Procurement Executive (SPE) is the agency head’s designee for the purposes of FAR 3.905.

3403.906 Remedies.

(a) The SPE is the agency head’s designee for the purposes of FAR 3.906.

- 25. Add part 3404 to subchapter A to read as follows:

PART 3404—ADMINISTRATIVE AND INFORMATION MATTERS

Sec.

3404.000 Scope of part.

3404.001 Definitions.

Subpart 3404.4—Safeguarding Classified Information Within Industry

3404.470 Contractor security vetting requirements.

3404.470–1 Contract clause.

Subpart 3404.7—Contractor Records Retention

3404.710 Contractor officer records management responsibilities.

3404.770 Contract clause.

Subpart 3404.8—Government Contract Files

3404.804 Closeout of contract files.

3404.804–5 Procedures for closing out contract files.

Authority: 5 U.S.C. 301; 40 U.S.C. 121(c); and 41 U.S.C. 3102.

3404.000 Scope of part.

3404.001 Definitions.

Federal record, as defined in 44 U.S.C. 3301, means all recorded information, regardless of form or characteristics, made or received by the Department under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by the Department or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the U.S. Government or because of the informational value of data in them.

Records inventory means a descriptive listing of each Federal record series or system that a contractor creates, receives, or maintains in performance of the contract, together with an indication of its location, retention, custodian, volume, and other pertinent data.

Subpart 3404.4—Safeguarding Classified Information Within Industry

3404.470 Contractor security vetting requirements.

3404.470–1 Contract clause.

The contracting officer must include the clause at 3452.204–71, Contractor security vetting requirements, in solicitations and contracts when it is anticipated that contractor employees will have access to proprietary or sensitive Department information including “Controlled Unclassified Information” as defined in 32 CFR 2002.4(h), Department Information Technology (IT) systems, contractor systems operated with Department data or interfacing with Department systems, or Department facilities/space, or perform duties in a school or in a location where children are present.

Subpart 3404.7—Contractor Records Retention

3404.710 Contractor officer records management responsibilities.

(a) Contracting officers must obtain a records inventory from the requiring activity and include it in each solicitation and contract. At least annually, contracting officers must obtain from the requiring activity a current, accurate, and complete records inventory for inclusion in the contract or confirmation, in writing, that the records inventory currently incorporated in the contract is accurate and complete.

(b) Upon notification from the contractor of any unlawful or accidental removal, defacing, alteration, or destruction of Federal records, including all forms of mutilation, the contracting officer must notify the requiring activity, the Department Records Officer, and the HCA within one business day.

3404.770 Contract clause.

The contracting officer must insert the clause at 3452.204–70, Records management, in all solicitations and contracts where the contractor will receive, create, work with, or otherwise handle Federal records, as defined in 44 U.S.C. 3301(a), regardless of the medium in which the record exists.

Subpart 3404.8—Government Contract Files

3404.804 Closeout of contract files.

3404.804–5 Procedures for closing out contract files.

(a)(16) The contractor has provided written affirmation that the contractor has transferred all Federal records that

the contractor created, received, or maintained in performance of the contract to the Federal Government, and the contractor has not retained a copy of any Federal record that contains information covered by 32 CFR part 2002 or that is generally protected from public disclosure by an exemption under the Freedom of Information Act (FOIA) with the exception, for the purposes of FOIA, of information that exclusively implicates the exemption 4 interests of the contractor.

PART 3406—COMPETITION REQUIREMENTS

■ 26. The authority citation for part 3406 continues to read as follows:

Authority: 5 U.S.C. 301; 41 U.S.C. 418(a) and (b); and 20 U.S.C. 1018a.

■ 27. Add section 3406.302–2 to read as follows:

3406.302–2 Unusual and compelling urgency.

(d)(1)(ii) The Senior Procurement Executive (SPE) is the agency head's designee for the purposes of FAR 6.302–2(d)(1)(ii).

(d)(2)(ii) The SPE is the agency head's designee for the purposes of FAR 6.302–2(d)(2)(ii).

■ 28. Add part 3407 to subchapter B to read as follows:

PART 3407—ACQUISITION PLANNING

Subpart 3407.1—Acquisition Plans

Sec.
3407.103 Agency head responsibilities.

Authority: 5 U.S.C. 301.

Subpart 3407.1—Acquisition Plans

3407.103 Agency head responsibilities.

The Senior Procurement Executive (SPE) is the agency head's designee for the purposes of FAR 7.103.

PART 3408—REQUIRED SOURCES OF SUPPLIES AND SERVICES

■ 29. The authority citation for part 3408 continues to read as follows:

Authority: 5 U.S.C. 301, unless otherwise noted.

3408.870 [Removed]

■ 30. Remove section 3408.870.

PART 3409—CONTRACTOR QUALIFICATIONS

■ 31. The authority citation for part 3409 continues to read as follows:

Authority: 5 U.S.C. 301.

■ 32. Revise section 3409.507–2 to read as follows:

3409.507–2 Contract clause.

The contracting officer must insert the clause at 3452.209–71 (Conflict of interest) in all contracts for services above the simplified acquisition threshold.

3409.570 [Removed]

■ 33. Remove section 3409.570.

PART 3412—ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

■ 34. The authority citation for part 3412 continues to read as follows:

Authority: 5 U.S.C. 301 and 20 U.S.C. 1018a.

■ 35. Add section 3412.301 to read as follows:

3412.301 Solicitation provisions and contract clauses for the acquisition of commercial products and commercial services.

(f)(1) The clause at 3452.224–73 has been authorized for inclusion in acquisition of commercial products and commercial services. Refer to 3424.70 for provisions related to the use of this clause.

PART 3416—TYPES OF CONTRACTS

■ 36. The authority citation for part 3416 continues to read as follows:

Authority: 5 U.S.C. 301 and 20 U.S.C. 1018a.

■ 37. Revise section 3416.307 to read as follows:

3416.307 Contract clauses.

(a) If the clause at FAR 52.216–7 (Allowable Cost and Payment) is used in a contract with a hospital, the contracting officer must modify the clause by deleting the words “Federal Acquisition Regulation (FAR) subpart 31.2” from paragraph (a)(1) and substituting “45 CFR part 75, appendix IX.”

(b) The contracting officer must insert the clause at 3452.216–70 (Additional cost principles) in all solicitations of and resultant cost-reimbursement contracts with nonprofit organizations other than educational institutions, hospitals, or organizations listed in 2 CFR part 200, subpart E.

■ 38. Amend section 3416.470 by revising paragraph (f)(2) to read as follows:

3416.470 Award-term contracting.

* * * * *

(f) * * *

(2) The extension of the contract as a result of an earned award term period is

affected by a bilateral contract modification.

* * * * *

■ 39. Add subpart 3416.5 to read as follows:

Subpart 3416.5—Indefinite-Delivery Contracts

3416.505 Ordering.

(b)(8) *Task-order and delivery-order ombudsman.* The Deputy Director of CAM is the agency head's designee for the purposes of FAR 16.505(b)(8).

PART 3417—SPECIAL CONTRACTING METHODS

■ 40. The authority citation for part 3417 continues to read as follows:

Authority: 31 U.S.C. 1535 and 20 U.S.C. 1018a.

■ 41. Add subpart 3417.1 to read as follows:

Subpart 3417.1—Multiyear Contracting

3417.104 General.

(b) The Senior Procurement Executive (SPE) is the agency head for the purposes of FAR 17.104(b).

■ 42. Revise section 3417.207 to read as follows:

3417.207 Exercise of options.

(c) For contracts that contain the clause at 3452.204–70, Records management, in addition to the requirements at FAR 17.207(c), the contracting officer may exercise an option only after:

(1) Obtaining the requiring activity's written confirmation that the records inventory currently incorporated in the contract is current, accurate, and complete; or

(2) Obtaining a revised up-to-date records inventory from the requiring activity.

(3) The contracting officer must include the up-to-date records inventory in the contract by separate, bilateral modification.

PART 3419—SMALL BUSINESS PROGRAMS

■ 43. The authority citation for part 3419 continues to read as follows:

Authority: 5 U.S.C. 301 and 20 U.S.C. 1018a.

■ 44. Revise section 3419.201–70 to read as follows:

3419.201–70 Office of Small and Disadvantaged Business Utilization (OSDBU).

The Office of Small and Disadvantaged Business Utilization (OSDBU) is responsible for facilitating

the implementation of the Small Business Act, as described in FAR 19.201. The OSDBU develops rules, policy, procedures, and guidelines for the effective administration of the Department's small business program.

3419.502-4 [Redesignated as 3419.502-70]

■ 45. Redesignate section 3419.502-4 as section 3419.502-70.

■ 46. Add section 3419.502-8 to read as follows:

3419.502-8 Rejecting Small Business Administration recommendations.

(d) The Senior Procurement Executive (SPE) is the agency head for the purposes of FAR 19.502-8.

■ 47. Add subpart 3419.8 to read as follows:

Subpart 3419.8—Contracting With the Small Business Administration (the 8(a) Program)

Sec.

3419.810 SBA appeals.

3419.812 Contract administration.

Subpart 3419.8—Contracting With the Small Business Administration (the 8(a) Program)

3419.810 SBA appeals.

(a) The SPE is the agency head for the purposes of FAR 19.810.

3419.812 Contract administration.

(d) The HCA is the agency head for the purposes of FAR 19.812(d).

PART 3424—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

■ 48. The authority citation for part 3424 continues to read as follows:

Authority: 5 U.S.C. 301.

■ 49. Add subpart 3424.7 to read as follows:

Subpart 3424.7—The Family Educational Rights and Privacy Act

Sec.

3424.701 Authority.

3424.702 Policy.

3424.703 Procedures.

3424.704 Contract clause.

Subpart 3424.7—The Family Educational Rights and Privacy Act

3424.701 Authority.

This subpart implements the Family Educational Rights and Privacy Act (FERPA or the Act), 20 U.S.C. 1232g. Additional FERPA-implementing regulations are found at 34 CFR part 99.

3424.702 Policy.

It is the Department's policy to designate as its authorized representative, for purposes of compliance with FERPA, any contractor

that will collect or receive access to personally identifiable information (PII) from student education records in connection with the conduct of an audit, evaluation, study, compliance review, or other Federal law enforcement activity. The Department will notify such contractors, or prospective contractors, prior to award or during contract performance of their obligations to protect student privacy in compliance with FERPA. Further, the Department will incorporate into all relevant solicitations and contracts the provisions and clauses needed to implement FERPA requirements. The aforementioned policies do not apply to Federal Student Aid (FSA) contracts for the origination, servicing, or collection of student financial aid, provided such contracts do not include tasks relating to the conduct of an audit, evaluation, study, compliance review, or other enforcement activity.

3424.703 Procedures.

During acquisition planning, the requiring activity, in consultation with the Department's Senior Agency Official for Privacy (SAOP) and Director of the Student Privacy Policy Office (SPPO Director), must review requirements to determine whether the contract will require the Department to share PII from students' education records with its contractor or authorize its contractor to collect such PII from students' education records for the purposes of conducting a study, evaluation, or audit of a federally supported education program, or the enforcement of Federal legal requirements that relate to such education programs. The requiring activity must notify the contracting officer of the determination.

3424.704 Contract clause.

The contracting officer must insert the clause at 3452.224-73 in all solicitations and contracts, including those for the acquisition of commercial products and commercial services, when a requiring activity has provided notification that a contractor will collect or receive access to PII from student education records in connection with carrying out an audit, evaluation, study, compliance review, or other Federal law enforcement activity on behalf of the Department. The contracting officer must fill out paragraph (b) of the clause at 3452.224-73 with the type(s) of PII to be collected or accessed by contractor.

PART 3428—BONDS AND INSURANCE

■ 50. The authority citation for part 3428 continues to read as follows:

Authority: 5 U.S.C. 301.

■ 51. Revise section 3428.311-2 to read as follows:

3428.311-2 Agency solicitation provisions and contract clauses.

The contracting officer must insert the clause at 3452.228-70 (Required insurance) in all solicitations and contracts when a cost-reimbursement contract is contemplated.

■ 52. Add part 3430 to subchapter E to read as follows:

PART 3430—COST ACCOUNTING STANDARDS ADMINISTRATIONS

Subpart 3430.2—CAS Program Requirements

Sec.

3430.201 Contract requirements.

3430.201-5 Waiver.

Authority: 5 U.S.C. 301; 40 U.S.C. 121(c); and 41 U.S.C. 3102.

Subpart 3430.2—CAS Program Requirements

3430.201 Contract requirements.

3430.201-5 Waiver.

(a) The Senior Procurement Executive (SPE) is the head of the agency for the purposes of FAR 30.201-5(a) and (b).

■ 53. Add part 3431 to subchapter E to read as follows:

PART 3431—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 3431.1—Applicability

Sec.

3431.101 Objectives.

Subpart 3431.2—Contracts With Commercial Organizations

3431.205 Selected costs.

3431.205-71 Noncontractor travel.

Authority: 5 U.S.C. 301; 40 U.S.C. 121(c); and 41 U.S.C. 3102.

Subpart 3431.1—Applicability

3431.101 Objectives.

The Senior Procurement Executive (SPE) is the agency head's designee for the purposes of FAR 31.101.

Subpart 3431.2—Contracts With Commercial Organizations

3431.205 Selected costs.

3431.205-71 Noncontractor travel.

The contracting officer may insert the clause at 3452.231-71 (Invitational travel costs) in solicitations and contracts when travel by other than Federal or contractor personnel will be required in performance of the contract.

PART 3432—CONTRACT FINANCING

■ 54. The authority citation for part 3432 continues to read as follows:

Authority: 5 U.S.C. 301.

■ 55. Add sections 3432.000, 3432.006, and 3432.006–3 to read as follows:

3432.000 Scope of part.**3432.006 Reduction or suspension of contract payments upon finding of fraud.****3432.006–3 Responsibilities.**

(b) Department personnel must report immediately and in writing any apparent or suspected instance where the contractor's request for advance, partial, or progress payments is based on fraud. The report must be made to the contracting officer and the Assistant Inspector General for Investigations. The report must outline the events, acts, or conditions that indicate the apparent or suspected violation and include all pertinent documents. The Assistant Inspector General for Investigations will investigate, as appropriate. If appropriate, the Office of the Inspector General will provide a report to the SPE.

3432.705 and 3432.705–2 [Redesignated as 3432.706 and 3432.706–2]

■ 56. Sections 3432.705 and 3432.705–2 are redesignated as sections 3432.706 and 3432.706–2.

■ 57. Amend newly redesignated section 3432.706–2 by:

- a. Redesignating paragraphs (a) and (b) as paragraphs (c) and (d); and
- b. Adding paragraph (e).

The addition reads as follows:

3432.705–2 Clauses for limitation of cost or funds.

* * * * *

(e)(1) The contracting officer must insert the clause at 3452.232–72 (Limitation of Government's obligation) in solicitations and resultant incrementally funded fixed-price contracts or contract line items (CLIN(s)) of such contracts only if—

(i) Sufficient funds are not available to the Department at the time of contract award or exercise of option to fully fund the contract, option, or CLIN(s); and

(ii) The contract (excluding any options), any exercised option, or CLIN(s)—

(A) Is for severable services; and

(B) Does not exceed one year in length; and

(C) Is incrementally funded using funds available (unexpired) as of the date the funds are obligated; or

(D) Congress has otherwise authorized incremental funding.

(2) When a partially funded contract contains the clause at 3452.232–72

(Limitation of Government's obligation) upon learning that the contractor is approaching the price of the contract or the limit of the funds allotted to the contract or specified CLIN(s) or upon receipt of the contractor's notice under paragraph (b) of the clause at 3452.232–72, the contracting officer must promptly obtain funding information pertinent to the continuation of the applicable CLIN(s) or contract and notify the contractor in writing. This notification must provide that—

(i)(A) Additional funds have been allotted, in a specified amount;

(B) The contract or applicable CLIN(s) is not to be further funded;

(C) The contract or applicable CLIN(s) is to be terminated; or

(D) The Government is considering whether to allot additional funds;

(ii) The contractor is entitled by the contract terms to stop work on applicable CLIN(s) when the funding limit is reached; and

(iii) Any work beyond the funding limit will be at the contractor's risk.

(3) Upon learning that a partially funded contract will receive no further funds, the contracting officer must promptly give the contractor written notice of the decision not to provide funds.

(4) The contracting officer must ensure that sufficient funds are allotted to the contract or applicable CLIN(s) to cover the total amount payable to the contractor in the event of termination for the convenience of the Government.

(5) The Government must not accept supplies or services under an incrementally funded contract or CLIN(s) once funding limits are reached until the contracting officer has given the contractor notice, to be confirmed in writing, that funds are available.

(6) Government personnel encouraging a contractor to continue work in the absence of funds will incur a violation of Revised Statutes section 3679 (31 U.S.C. 1341) that may subject the violator to civil or criminal penalties.

(7) An incrementally funded fixed-price contract and/or CLIN(s) must be fully funded as soon as funds are available.

(8) The contracting officer must insert the information required in the table in paragraph (l) of the clause at 3452.232–72. Since the funds allotted must cover costs of termination of the applicable CLIN(s) for the Government's convenience, the contractor must provide the last date of performance subject to the contracting officer's concurrence. The contracting officer may revise the contractor's notification period in paragraph (b) of the clause

from "ninety" to "thirty" or "sixty" days, as appropriate.

PART 3433—PROTESTS, DISPUTES, AND APPEALS

■ 58. The authority citation for part 3433 continues to read as follows:

Authority: 5 U.S.C. 301.

■ 59. Revise section 3433.103 to read as follows:

3433.103 Protests to the agency.

(d)(4)(i) All protests to the agency must be submitted to the contracting officer identified in the solicitation. Interested parties may request an independent review of their protest as an alternative to consideration by the contracting officer. If a protest is silent on this matter, the contracting officer will decide the protest. The Department will not consider an appeal of the contracting officer's protest decision.

(ii) If the protester requests an independent review, the HCA will decide the protest. In the event the HCA is not at least one level above the contracting officer, or if the HCA has been substantially involved in the procurement, the SPE will decide the protest.

(iii) Contracting officers must include the provision at 3452.233–70 in solicitations.

(f)(3) The contracting officer's HCA must approve the justification or determination to continue performance.

PART 3437—SERVICE CONTRACTING

■ 60. The authority citation for part 3437 continues to read as follows:

Authority: 5 U.S.C. 301 and 20 U.S.C. 1018a.

■ 61. Revise subpart 3437.2 to read as follows:

Subpart 3437.2—Advisory and Assistance Services

Sec.

3437.204 Guidelines for determining availability of personnel.

3437.270 Services of consultants clause.

Subpart 3437.2—Advisory and Assistance Services**3437.204 Guidelines for determining availability of personnel.**

The HCA is the agency head for the purposes of FAR 37.204.

3437.270 Services of consultants clause.

The contracting officer must insert the clause at 3452.237–70 (Services of consultants) in all solicitations and resultant cost-reimbursement contracts for consultant services that do not provide services to Federal Student Aid (FSA).

■ 62. Add section 3437.601 to read as follows:

3437.601 General.

It is the Department's policy that all new service contracts must be performance-based, with clearly defined deliverables and performance standards. Any deviations from this policy must be fully justified in writing and approved by the HCA.

PART 3439—ACQUISITION OF INFORMATION TECHNOLOGY

■ 63. The authority citation for part 3439 continues to read as follows:

Authority: 5 U.S.C. 301 and 20 U.S.C. 1018a.

■ 64. Revise section 3439.702 to read as follows:

3439.702 Department information security and privacy requirements.

The contracting officer must include the clause at 3452.239–71 (Department information security and privacy requirements) in all solicitations and contracts.

3439.703 [Removed]

■ 65. Remove section 3439.703.

PART 3442—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 66. The authority citation for part 3442 continues to read as follows:

Authority: 5 U.S.C. 301.

■ 67. Revise section 3442.7101 to read as follows:

3442.7101 Policy and clause.

(a) It is the policy of the Department that all meetings, conferences, and seminars be accessible to persons with disabilities.

(b) The contracting officer must insert the clause at 3452.242–73 (Accessibility of meetings, conferences, and seminars to persons with disabilities) in all solicitations and contracts where conferences are contemplated.

PART 3443—CONTRACT MODIFICATIONS

■ 68. The authority citation for part 3443 continues to read as follows:

Authority: 5 U.S.C. 301.

■ 69. Revise section 3443.107 to read as follows:

3443.107 Contract clause.

The contracting officer must insert a clause substantially the same as the clause at 3452.243–70 (Key personnel) in all solicitations and contracts in which it will be essential for the

contracting officer to be notified that a change of designated key personnel is to take place by the contractor.

PART 3447—TRANSPORTATION

■ 70. The authority citation for part 3447 continues to read as follows:

Authority: 5 U.S.C. 301.

■ 71. Revise section 3447.701 to read as follows:

3447.701 Foreign travel clause.

The contracting officer must insert the clause at 3452.247–70 (Foreign travel) in all solicitations and resultant cost-reimbursement contracts where foreign travel is contemplated.

PART 3452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 72. The authority citation for part 3452 continues to read as follows:

Authority: 5 U.S.C. 301.

■ 73. Add section 3452.204–70 to read as follows:

3452.204–70 Records management.

As prescribed in 3404.770, insert the following clause:

Records Management (Date)

A. Applicability

This clause applies to all Contractors and subcontractors that receive, create, work with, or otherwise handle Federal records, as defined in paragraph B, regardless of the medium in which the record exists.

B. Definitions

“Federal record,” as defined in 44 U.S.C. 3301, means all recorded information, regardless of form or characteristics, made or received by the Department under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by the Department or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the U.S. Government or because of the informational value of data in them.

“Records inventory,” as used in this clause, means a descriptive listing of each Federal record series or system that a Contractor creates, receives, or maintains in performance of its contract with the Department, together with an indication of its location, retention, custodian, volume, and other pertinent data.

C. Requirements

1. The Contractor shall comply with all applicable records management laws and regulations, as well as National Archives and Records Administration (NARA) records policies, including the Federal Records Act (44 U.S.C. chapters 21, 29, 31, and 33), NARA regulations at 36 CFR chapter XII, subchapter B, including 36 CFR part 1236, and those policies associated with the

safeguarding of Federal records covered by the Privacy Act of 1974, as amended (Privacy Act) (5 U.S.C. 552a). These laws, regulations, and policies include the appropriate preservation of all Federal records, regardless of form or characteristics, mode of transmission, or state of completion.

2. In accordance with 36 CFR 1222.32, all data created for U.S. Government use and delivered to, or falling under the legal control of, the U.S. Government are Federal records subject to the provisions of 44 U.S.C. chapters 21, 29, 31, and 33, the Freedom of Information Act, as amended (FOIA) (5 U.S.C. 552), and the Privacy Act, and must be managed and scheduled for disposition only as permitted by Federal statute or regulation.

3. In accordance with 36 CFR 1222.32, the Contractor shall maintain and manage all Federal records created for U.S. Government use, created during performance of this contract, and/or delivered to, or under the legal control of, the U.S. Government in accordance with Federal law. Electronic Federal records and associated metadata specified for delivery under this contract must be accompanied by sufficient technical documentation to facilitate their understanding and use.

4. This contract includes a records inventory, which the Department maintains as current, accurate, and complete.

(a) Upon Contracting Officer request, the Contractor shall provide input and assistance in maintaining the current, accurate, and complete state of the records inventory.

(b) If the Contractor creates, receives, or maintains a Federal record series or system that is not included in the records inventory, the Contractor shall notify the Contracting Officer within five business days of the Contractor's creation, receipt, or maintenance of such Federal record series or system, and provide the Contracting Officer with all information necessary for the Department to appropriately update the records inventory.

(c) Any necessary update to the records inventory will be effectuated by a modification to the contract.

5. The U.S. Government reserves the right to inspect, at any time, Contractor and subcontractor policies, procedures, and strategies for ensuring that Federal records are appropriately maintained.

6. The Contractor is responsible for preventing the alienation or unauthorized destruction of Federal records under this contract, including all forms of mutilation. Federal records may not be removed from the legal custody of the Department or destroyed except in accordance with the provisions of this contract and the Federal Records Act. Willful and unlawful destruction, damage, or alienation of Federal records is subject to the fines and penalties imposed by 18 U.S.C. 2701. The Contractor shall report any unlawful or accidental removal, defacing, alteration, or destruction of Federal records to the Contracting Officer within one business day.

7. The Contractor shall ensure that the appropriate personnel, administrative, technical, and physical safeguards are established to ensure the security and confidentiality of all Federal records in

accordance with this contract and applicable law.

8. The Contractor shall not remove material from U.S. Government facilities or systems, or facilities or systems operated or maintained on the U.S. Government's behalf, without the express prior written authorization of the Contracting Officer.

9. The Contractor shall not create or maintain any Federal records containing any non-public Department information not specified or authorized by this contract.

10. (a) During the term of this contract, the Contractor shall not (i) disclose any Federal record, or any copy thereof, that contains information covered by 32 CFR part 2002 or FOIA (with the exception, for the purposes of FOIA, of information that exclusively implicates the exemption 4 interests of the Contractor); or (ii) sell any Federal record, or any copy thereof.

(b) After expiration or termination of this contract, the Contractor shall not retain or have access to any Federal record, or any copy thereof, that contains information covered by 32 CFR part 2002 or that is generally protected from public disclosure by an exemption under FOIA with the exception, for the purposes of FOIA, of information that exclusively implicates the exemption 4 interests of the Contractor.

(c) Under no circumstances shall the Contractor destroy Federal records except in accordance with the provisions of this contract and the Federal Records Act.

11. All Contractor employees assigned to this contract who create, work with, or otherwise handle Federal records are required to complete Department-provided records management training. The Contractor is responsible for confirming training has been completed according to Department policies, including initial training and any annual or refresher training.

12. The Contractor is required to notify the Contracting Officer of any contractual relationship (sub-contractor) in support of this contract requiring the disclosure of information, documentary material and/or Federal records generated under, or relating to, contracts. The Contractor (and any sub-contractor) is required to abide by U.S. Government and the Department's guidance for protecting sensitive, proprietary information, classified, and controlled unclassified information.

(a) The Contractor shall incorporate the substance of this clause, its terms and requirements including this paragraph, in all subcontracts requiring the disclosure to a subcontractor of information, documentary material, and/or Federal records generated under, or relating to, the performance of this contract, and require written subcontractor acknowledgement of the same.

(b) Violation by a subcontractor of any provision set forth in this clause will be attributed to the Contractor.

(End of Clause)

■ 74. Add section 3452.204–71 to read as follows:

3452.204–71 Contractor security vetting requirements.

As prescribed in 3404.470–1, insert the following clause:

Contractor Security Vetting Requirements (Date)

(a) The Contractor and its subcontractors shall comply with Department of Education personnel, cyber, privacy, and security policy requirements set forth in “Contractor Security Vetting Requirements” at <http://www.ed.gov/fund/contract/about/bsp.html>.

(b) Contractor employees who will have access to proprietary or sensitive Department information including “Controlled Unclassified Information” as defined in 32 CFR 2002.4(h), Department IT systems, Contractor systems operated with Department data or interfacing with Department systems, or Department facilities or space, or perform duties in a school or in a location where children are present, must undergo a personnel security screening and receive a favorable determination and are subject to reinvestigation as described in the “Contractor Vetting Security Requirements.” Compliance with the “Contractor Vetting Security Requirements,” as amended, is required.

(c) The type of security investigation required to commence work on a Department contract is dictated by the position designation determination assigned by the Department. All Department Contractor positions are designated commensurate with their position risk/sensitivity, in accordance with title 5 of the Code of Federal Regulations (5 CFR 731.106) and OPM's Position Designation Tool (PDT) located at: <https://pdt.nbis.mil/>. The position designation determines the risk level and the corresponding level of background investigations required.

(d) The Contractor shall comply with all Contractor position designations established by the Department.

(e) The following are the Contractor employee positions required under this contract and their designated risk levels:

High Risk (HR): (Specify HR positions or Insert “Not Applicable”)

Moderate Risk (MR): (Specify MR positions or Insert “Not Applicable”)

Low Risk (LR): Specify LR positions or Insert “Not Applicable”)

(f) For performance-based contracts where the Department has not identified required labor categories for Contractor positions, the Department considers the risk sensitivity of the services to be performed and the access to Department facilities and systems that will be required during performance, to determine the uniform Contractor position risk level designation for all Contractor employees who will be providing services under the contract. The uniform Contractor position risk level designation applicable to this performance-based contract is: (Contracting Officer to complete with overall risk level; or insert “Not Applicable”).

(g) Only U.S. citizens will be eligible for employment on contracts requiring a Low Risk/Public Trust, Moderate Risk/Public Trust, High Risk/Public Trust, or a National Security designation.

(h) An approved waiver, in accordance with the “Contractor Vetting Security Requirements,” is required for any exception to the requirements of paragraph (g) of this section.

(i) The Contractor shall—

(1) Comply with the Principal Office (PO) processing requirements for personnel security screening;

(2) Ensure that no Contractor employee is placed in a higher risk position than for which the employee is approved;

(3) Ensure Contractor employees submit required security forms for reinvestigation in accordance with the time frames set forth in the “Contractor Vetting Security Requirements”;

(4) Report to the COR any information (e.g., personal conduct, criminal conduct, financial difficulties) that would raise a concern about the suitability of a Contractor employee or whether a Contractor employee's continued employment would promote the efficiency of the service or violate the public trust;

(5) Protect sensitive and Privacy Act-protected information, including “Controlled Unclassified Information” as defined in 32 CFR 2002.4(h), from unauthorized access, use, or misuse by its Contractor employees, prevent unauthorized access by others, and report any instances of unauthorized access, use, or misuse to the COR;

(6) Report to the COR any removal of a Contractor employee from a contract within one business day if removed for cause or within two business days if otherwise removed;

(7) Upon the occurrence of any of the events listed under paragraph (b) of FAR Clause 52.204–9, Personal Identity Verification of Contractor Personnel, return a PIV ID to the COR within seven business days of the Contractor employee's departure; and

(8) Report to the COR any change to job activities that could result in a change in the Contractor employee's position or the need for increased security access.

(j) Failure to comply with any of the personnel security requirements in the “Contractor Security Vetting Requirements” at <http://www.ed.gov/fund/contract/about/bsp.html>, may result in a termination of the contract for default or cause.

(End of Clause)

3452.208–71 [Removed]

■ 75. Remove section 3452.208–71.

■ 76. Amend section 3452.216–71 by revising the date of the clause and paragraph (e) to read as follows:

3452.216–71 Award-Term.

* * * * *

Award-Term (Date)

* * * * *

(e) The contract term or ordering period requires bilateral modification to reflect the ATRB's decision to award and the Contractor's agreement to accept an Award Term. If the contract term or ordering period has one year remaining, the operation of the contract Award

Term feature will cease and the contract term or ordering period will not extend beyond the maximum term stated in the contract.

* * * * *

■ 77. Revise section 3452.224–71 to read as follows:

3452.224–71 Notice about research activities involving human subjects.

As prescribed in 3424.170, insert the following provision in any solicitation where a resultant contract will include, or is likely to include, research activities involving human subjects covered under 34 CFR part 97:

Notice About Research Activities Involving Human Subjects (Date)

(a) Applicable Regulations. In accordance with Department of Education regulations on the protection of human subjects, title 34, Code of Federal Regulations, part 97 (the Regulations), Contractors and subcontractors, engaged in covered (nonexempt) research activities are required to establish and maintain procedures for the protection of human subjects. In addition, the Contractor must notify other entities (known to the Contractor) engaged in the covered research activities of their responsibility to comply with the Regulations.

(b) Definitions.

(1) The Regulations define research as “a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge.” (34 CFR 97.102(l)). If an activity follows a deliberate plan designed to develop or contribute to generalizable knowledge, it is research. Research includes activities that meet this definition, whether or not they are conducted under a program considered research for other purposes. For example, some demonstration and service programs may include research activities (34 CFR 97.102(l)).

(2) The Regulations define a human subject as a living individual about whom an investigator (whether professional or student) conducting research obtains data through intervention or interaction with the individual or obtains, uses, studies, analyzes, or generates identifiable private information. (34 CFR 97.102(e)(1)). Under this definition:

(i) The investigator gathers information about a living person through—

(A) Intervention—Manipulating the subject’s environment for research purposes, as might occur when a new instructional technique is tested; or

(B) Interaction—Communicating or interacting with the individual, as occurs with surveys and interviews.

(ii) Identifiable private information is private information about a living person that can be linked to that individual (the identity of the subject is or may be readily ascertained by the investigator or associated with the information).

(iii) Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information

that has been provided for specific purposes by an individual and that an individual can reasonably expect will not be made public (for example, a school health record).

(c) Exemptions. 34 CFR 97.104(d) provides exemptions from the Federal Policy for the Protection of Human Subjects for research activities in which the only involvement of human subjects will be in one or more of the categories set forth in 34 CFR 97.104(d). However, if the research subjects are children, the exemption at 34 CFR 97.104(d)(2) (*i.e.*, research involving the use of educational tests, survey procedures, interview procedures or observation of public behavior) is modified by 34 CFR 97.401(b), as explained in paragraph (d) of this provision.

(d) Children as research subjects. 34 CFR 97.402(a) defines children as “persons who have not attained the legal age for consent to interventions or procedures involved in the research, under the applicable law of the jurisdiction in which the research will be conducted.” 34 CFR 97.401(b) provides that, if the research involves children as subjects—

(1) The exemption in 34 CFR 97.104(d)(2) does not apply to activities involving—

(i) Survey or interview procedures involving children as subjects; or

(ii) Observations of public behavior of children in which the investigator or investigators will not participate in the activities being observed.

(2) The exemption in 34 CFR 97.104(d)(2) continues to apply, unmodified, by 34 CFR 97.401(b), to—

(i) Educational tests; and

(ii) Observations of public behavior in which the investigator or investigators will not participate in the activities being observed.

(e) Proposal Instructions. An offeror proposing to do research that involves human subjects must provide information to the Department on the proposed exempt and nonexempt research activities. The offeror should submit this information as an attachment to its technical proposal. No specific page limitation applies to this requirement, but the offeror should be brief and to the point.

(1) For exempt research activities involving human subjects, the offeror should identify the exemption(s) that applies and provide sufficient information to allow the Department to determine that the designated exemption(s) is appropriate.

(2) For nonexempt research activities involving human subjects, the offeror must cover the following seven points in the information it provides to the Department. This seven-point narrative can usually be provided in two pages or less:

(i) *Human subjects’ involvement and characteristics*: Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, institutionalized individuals, or others who are likely to be vulnerable.

(ii) *Sources of materials*: Identify the sources of research material obtained from or

about individually identifiable living human subjects in the form of specimens, records, or data.

(iii) *Recruitment and informed consent*: Describe plans for the recruitment of subjects and the consent procedures to be followed.

(iv) *Potential risks*: Describe potential risks (physical, psychological, social, financial, legal, educational, or other) and assess their likelihood and seriousness. Where appropriate, discuss alternative interventions and procedures that might be advantageous to the subjects.

(v) *Protection against risk*: Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess the likely effectiveness of such procedures. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(vi) *Importance of knowledge to be gained*: Discuss why the risks to the subjects are reasonable in relation to the importance of the knowledge that may reasonably be expected to result.

(vii) *Collaborating sites*: If research involving human subjects will take place at collaborating site(s), name the sites and briefly describe their involvement or role in the research.

(3) If a reasonable potential exists that a need to conduct research involving human subjects may be identified after award of the contract and the offeror’s proposal contains no definite plans for such research, the offeror should briefly describe the circumstances and nature of the potential research involving human subjects.

(f) Assurances and certifications.

(1) In accordance with the Regulations and the terms of this provision, all Contractors and subcontractors that will be engaged in research activities involving human subjects shall be required to comply with the requirements for Assurances and Institutional Review Board approvals, as set forth in the contract clause 3452.224–72 (Research activities involving human subjects).

(2) The Contracting Officer reserves the right to require that the offeror have or apply for the assurance and provide documentation of Institutional Review Board (IRB) approval of the proposed research prior to award.

Based on 34 CFR 97.114 Cooperative Research, any institution involved in cooperative research projects (*i.e.*, research projects covered by this Regulation that involve more than one institution) shall enter into a joint review arrangement or rely upon the approval of a single IRB (sIRB) and a reliance agreement for any research conducted within the United States.

(g) Additional information:

(1) The Regulations, and related information on the protection of human research subjects, can be found on the Department’s protection of human subjects in research website: <https://www2.ed.gov/about/offices/list/ocfo/humansub.html>.

(2) Offerors may also contact the following office to obtain information about the

Regulations, the protection of human subjects, and related policies and guidelines: Protection of Human Subjects Coordinator, U.S. Department of Education, Office of Finance and Operations, Office of Acquisition, Grants, and Risk Management, 400 Maryland Avenue SW, Washington, DC 20202-4331. Email: HumanSubjectsResearch@ed.gov.

(End of Provision)

■ 78. Revise section 3452.224-72 to read as follows:

3452.224-72 Research activities involving human subjects.

As prescribed in 3424.170, insert the following clause in any contract that includes research activities involving human subjects covered under 34 CFR part 97:

Research Activities Involving Human Subjects (Date)

(a) In accordance with Department of Education (the "Department") regulations on the protection of human subjects in research, title 34, Code of Federal Regulations, part 97 (the Regulations), Contractors and subcontractors engaged in covered (nonexempt) research activities shall establish and maintain procedures for the protection of human subjects. The Contractor must include the substance of this clause in all subcontracts. In addition, the Contractor shall notify other entities (known to the Contractor) engaged in the covered research activities of their responsibility to comply with the regulations. The definitions in 34 CFR 97.102 apply to this clause. As used in this clause, "covered research" means research involving human subjects that is not exempt under 34 CFR 97.104 and 97.401(b).

(b) If the Department determines that proposed research activities involving human subjects are covered (*i.e.*, not exempt under the regulations), the Contracting Officer (CO) or Contracting Officer's Representative (COR) will require the Contractor to apply for the Federal Wide Assurance from the Office for Human Research Protections, U.S. Department of Health and Human Services, if the Contractor does not already have certification on file. The CO will also require that the Contractor obtain and send to the Department documentation of Institutional Review Board (IRB) review and approval of the proposed research.

(c) Under no condition shall the Contractor conduct, or allow to be conducted, any research activity involving human subjects prior to the Department's receipt of the certification that the proposed research has been reviewed and approved by the IRB (34 CFR 97.103(f)). No research involving human subjects shall be initiated under this contract until the Contractor has provided the CO (or the COR) a properly completed certification form certifying IRB review and approval of the research activity, and the CO or COR has acknowledged the receipt of such certification.

(d) In accordance with 34 CFR 97.109(f)(1), unless IRB or the Department determines otherwise, continuing review of research is not required in the following conditions:

1. Research is eligible for expedited review;
2. Research is reviewed by the IRB in accordance with the limited IRB review as described 34 CFR 97.104(d)(2)(iii); or

3. Research that is part of the IRB-approved study that has progressed to the point that it involves only one or both of the following:

i. data analysis, including analysis of identifiable private information or identifiable biospecimens, or
ii. accessing follow-up clinical data from interventions that subjects would undergo as part of clinical care.

(1) For each activity under this contract that requires continuing review, the Contractor shall submit an annual written representation to the CO or COR stating whether research activities have been reviewed and approved by the IRB within the previous 12 months. The Contractor may use the form titled "U.S. Department of Health and Human Services (HHS) Subpart C Certification Form" for this representation. For multi-institutional projects, the Contractor shall provide this representation on its behalf and on behalf of any subcontractor engaged in research activities for which continuing IRB reviews are required.

(2) If the IRB disapproves, suspends, terminates, or requires modification of any research activities under this contract, the Contractor shall immediately notify the CO in writing of the IRB's action.

(e) The Contractor shall bear full responsibility for performing, as safely as is feasible, all activities under this contract involving the use of human subjects and for complying with all applicable regulations and requirements concerning human subjects. Neither the Contractor, subcontractor, agents of the Contractor, or employees of the Contractor, nor any person, organization, institution, or group of any kind involved in the performance of such activities under this contract, shall be deemed to constitute an agent or employee of the Department or of the Federal government with respect to such activities. The Contractor agrees to discharge its obligations, duties, and undertakings and the work pursuant thereto, whether requiring professional judgment or otherwise, as an independent contractor without imputing liability on the part of the Government for the acts of the Contractor, subcontractor, or their employees.

(f) Upon discovery of any noncompliance with any of the requirements or standards as stated in this clause, the Contractor shall correct such noncompliance as soon as practicable, typically no later than 1 business day. If the CO determines, in consultation with the Protection of Human Subjects Coordinator, Office of Acquisition, Grants, and Risk Management, Office of Finance and Operations, or the sponsoring office, that the Contractor is not in compliance with the requirements or standards stated in this clause, the CO may suspend work under this contract, in whole or in part, until it is determined that the Contractor has corrected such noncompliance and the CO authorizes the continuation of work.

1. Initial notice of suspension. The initial notice of suspension under this clause may

be communicated orally or in writing by the CO.

2. Notice of suspension of work. The CO shall provide written notice of suspension of work under this clause. The notice shall contain the following:

a. The effective date of suspension of work.
b. The requirements and/or standards for which the Contractor is out of compliance.
c. Any special instructions for the suspension of work.

3. Authorization to resume work. If the CO determines that the noncompliance has been remedied and it is in the best interest of the Government, the CO may authorize work to resume under the contract. The CO will provide written notice to the Contractor of such authorization.

(g) Non-compliance with the requirements or standards as stated in this clause may result in the Government termination of this contract for default, in full or in part, in accordance with FAR 49.401. Such termination may be in lieu of or in addition to suspension of work under the contract. Nothing herein shall be construed to limit the Government's right to terminate the contract for failure to fully comply with such requirements or standards.

(h) The Regulations, and related information on the protection of human research subjects, can be found on the Department's protection of human subjects in research website: <https://www2.ed.gov/about/offices/list/ocfo/humansub.html>.

Contractors may also contact the following office to obtain information about the regulations for the protection of human subjects and related policies and guidelines: Protection of Human Subjects Coordinator, U.S. Department of Education Office of Finance and Operations, Office of Acquisition, Grants, and Risk Management, 400 Maryland Avenue SW, Washington, DC 20202-4331. Email: HumanSubjectsResearch@ed.gov.

(End of Clause)

■ 79. Add section 3452.224-73 to read as follows:

3452.224-73 Protection of student privacy in compliance with FERPA.

As prescribed in 3424.704, insert the following clause in solicitations and contracts:

Protection of Student Privacy in Compliance With FERPA (Date)

(a) Pursuant to the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, and its implementing regulations, 34 CFR part 99, the Department designates the Contractor to serve as an authorized representative of the Secretary of Education, solely for the purpose of carrying out an audit or evaluation of federally supported education programs, the enforcement or compliance with Federal legal requirements that relate to federally supported education programs, or conducting a study for or on behalf of the Department, to develop, validate, or administer predictive tests, administer student aid programs, or improve instruction, as specified in the statement of

work, the schedule, and other similar documents to the contract.

(b) The Contractor shall collect or receive access to the following personally identifiable information from student education records that is protected by FERPA: [specify the PII from student education records to be collected or accessed by the Contractor, as identified by the requiring activity] (collectively, the PII).

(c) The Contractor shall only use the PII to meet the purpose set forth in paragraph (a) of this clause and for the activity, scope, and duration specified in the statement of work, the schedule, and other similar documents to the contract. Prior to collecting or receiving access to the PII, the Contractor shall establish policies and procedures, consistent with FERPA and other Federal confidentiality and privacy provisions, to protect the PII from further disclosure (except back to the Department) and unauthorized use, including limiting use of the PII to only authorized representatives with legitimate interests in the purpose set forth in paragraph (a) of this clause.

(d) To the extent required to ensure the Contractor's compliance with the provisions of FERPA and other Federal provisions, the Contractor shall afford the Department and its authorized agents access to all of the facilities, installations, technical capabilities, operations, documentation, records, databases, policies, procedures, and systems of the Contractor and any subcontractor.

(e) The Contractor shall limit access to the PII to the Contractor's personnel who require the PII to satisfy the Contractor's obligations under the contract.

(f) If the Contractor collects or receives access to the PII to conduct a study for, or on behalf of, an educational agency or institution, then the Contractor shall conduct such study in a manner that does not permit personal identification of parents and students by anyone other than representatives of the Contractor, or subcontractors, with legitimate interests in the study.

(g) Once the purpose for which the PII was collected or accessed is fully satisfied, the Contractor shall notify the Department immediately and seek the Department's instruction and authorization regarding destruction of the PII in accordance with law.

(h) If the Contractor subcontracts any of the contract work requiring collection or access to the PII, then the Contractor shall include this clause (including this paragraph (h)) in any such subcontract and, further, the Contractor shall ensure that subcontractors at any tier comply with all terms, conditions, and obligations imposed on the Contractor herein and under FERPA.

(i) Violation by a subcontractor of any provision set forth in this clause will be attributed to the Contractor.

(End of Clause)

■ 80. Add section 3452.231–71 to read as follows:

3452.231–71 Invitational travel costs.

As prescribed in 3431.205–71, insert a provision substantially the same as the following:

Invitational Travel Costs (Date)

No invitational travel, which is defined as Official Government travel conducted by a non-Federal employee in order to provide a "Direct Service" (e.g., presenting on a topic, serving as a facilitator, serving on a Federal Advisory Committee Act, or advising in an area of expertise to the Government, may be provided under this contract or in association with this contract unless consent is provided below. The cost of invitational travel under this contract not identified in the consent section of this clause is unallowable unless the Contractor receives written consent from the Contracting Officer prior to the incurrence of the cost. If the Contractor wishes to be reimbursed for a cost related to invitational travel, a request must be in writing at least 21 days prior to the day that costs would be incurred. The Contractor must include in its request the following: why the invitational travel cost is integral to fulfill a Government requirement in the contract, and the proposed cost that must be in accordance with Federal Travel Regulations. The lack of a timely response from the Contracting Officer must not constitute constructive acceptance of the allowability of the proposed charge.

Consent is hereby given to the Contractor to _____.

(End of Clause)

■ 81. Add section 3452.232–72 to read as follows:

3452.232–72 Limitation of Government's obligation.

As prescribed in 3432.705–2(c), insert the following clause. The Contracting Officer may vary the 90-day period from 90 to 30 or 60 days and the 85 percent from 85 to 75 percent. "Task Order," "contract," or other appropriate designation may be substituted for "CLIN(s)" wherever that word appears in the clause:

Limitation of Government's Obligation (Date)

Sufficient funds are not presently available to cover the total price of the CLIN(s) listed in paragraph (l) below. The CLIN(s) identified in paragraph (l) below are incrementally funded to cover the identified period of performance. Additional funds are intended to be allotted to the applicable CLIN(s) by contract modification up to and including the full price of the entire period of performance. This notwithstanding, the Government will not be obligated to pay the Contractor for amounts payable in excess of the amount actually allotted, nor will the Contractor be obligated to perform in excess of such amount.

(a) The CLIN(s) in paragraph (l) of this clause is/are incrementally funded. Paragraph (l) also lists the allotment amount presently available for payment and allotted to the CLIN(s), inclusive of any termination costs for the Government's convenience, and the allotment schedule that provides the last date of Contractor performance for which it is estimated the allotted amount will cover. The parties contemplate that the Government

may allot additional funds incrementally to the applicable CLIN(s) under the contract, up to the full price specified in the contract. The Contractor agrees to perform work under the applicable CLIN(s) up to the point at which the total amount paid and payable by the Government under the contract for the applicable CLIN(s), including estimated costs in the event of termination of those CLIN(s) for the Government's convenience, approximates the total amount currently allotted to such CLIN(s).

(b) Notwithstanding the dates specified in the allotment schedule in paragraph (l) of this clause, the Contractor shall notify the Contracting Officer in writing at least ninety (90) days prior to the date when, in the Contractor's best judgment, the work will reach the point at which the total amount payable by the Government, including any cost for termination for the Government's convenience, will approximate 85 percent of the total amount then allotted to the contract for performance of the applicable CLIN(s). The notification will state (1) the estimated date when that point will be reached, and (2) an estimate of additional funding, if any, needed to continue performance of applicable CLIN(s) up to the date in paragraph (l) of this clause, or to a mutually agreed upon substitute date.

(c) If, after notification pursuant to paragraph (b) of this clause, additional funds are not allotted by the date identified in paragraph (l), the date identified in the Contractor's notification, or by an agreed substitute date, upon the Contractor's written request, the Contracting Officer may terminate for the Government's convenience any CLIN(s) for which additional funds have not been allotted. If the Contractor estimates that the funds available will allow it to continue to discharge its obligations beyond that date, it may specify a later date in its request to terminate the applicable CLIN(s), and the Contracting Officer may terminate such CLIN(s) on that later date. In no event is the Contractor authorized to continue work on those CLIN(s) beyond the time when the amount payable, to include costs of termination for the Government's convenience, is equal to the funds allotted.

(d) If, solely by reason of failure of the Government to allot additional funds, by the dates indicated in paragraph (l) of this clause, in amounts sufficient for timely performance of the CLIN(s) identified in paragraph (l) of this clause, the Contractor incurs additional costs or is delayed in the performance of the work under this contract and if additional funds are allotted, the Contractor may request an equitable adjustment to the price or prices (including appropriate target, billing, and ceiling prices, where applicable) of the applicable CLIN(s), or in the time of delivery, or both, by written request to the Contracting Officer with sufficient documentation to support such equitable adjustment. Failure to agree to any such equitable adjustment hereunder will be a dispute concerning a question of fact within the meaning of the clause titled "Disputes." Notwithstanding anything to the contrary herein, in no event will an equitable adjustment under this paragraph (d) be due to the Contractor for costs that arise from or relate to the

Contractor's breach of the notification obligations in paragraph (b) of this clause.

(e) Except as required by other provisions of this contract, specifically citing and stated to be an exception to this clause—

(1) The Government is not obligated to pay for goods or services, to include reimbursement of costs for termination for the Government's convenience, in excess of the total amount allotted by the Government to the CLIN(s) identified in paragraph (l) of this clause; and

(2) The Contractor is not authorized to continue performance of the CLIN(s) identified in paragraph (l) of this clause in excess of the amount allotted by the Government to the applicable CLIN(s).

(3) As used in this clause, the total amount payable by the Government in the event of termination of applicable CLIN(s) for convenience includes reasonable costs, profit, and termination settlement costs for those item(s).

(f) No communication or representation in any form other than in writing from the Contracting Officer shall affect the amount allotted by the Government to this contract and applicable CLIN(s). The Government is not obligated to reimburse the Contractor for any costs in excess of the total amount allotted by the Government to the applicable CLIN(s), whether incurred during the course of the contract or as a result of termination.

(g) The Government may at any time prior to termination allot additional funds for the performance of the CLIN(s) identified in paragraph (l) of this clause.

(h) When additional funds are allotted for continued performance of the CLIN(s) identified in paragraph (l) of this clause, the parties will agree as to the period of contract performance that will be covered by the funds. The provisions of this clause will apply in like manner to the additional allotted funds and agreed substitute date, and the contract will be modified accordingly.

(i) The termination provisions of this clause do not limit the rights of the Government to terminate the contract, in whole or in part, for cause in the event of any breach or default by the Contractor. The provisions of this clause are limited to the work and allotment of funds for the CLIN(s) set forth in paragraph (l) of this clause. This clause no longer applies once the contract is fully funded except with regard to the rights or obligations of the parties concerning equitable adjustments negotiated under paragraph (d) of this clause.

(j) Nothing in this clause affects the right of the Government to terminate this contract, in whole or in part, for convenience or cause.

(k) Nothing in this clause shall be construed as authorization of voluntary services whose acceptance is otherwise prohibited under 31 U.S.C. 1342.

(l) Incremental funds are allotted to the CLIN(s) under this contract as follows:

CLIN	Amount allotted	Last date of performance

(End of Clause)

■ 82. Add section 3452.233–70 to read as follows:

3452.233–70 Agency level protests.

As prescribed in 3433.103, insert the following clause:

Agency Level Protests (Date)

All protests to the agency must be submitted to the Contracting Officer. In accordance with FAR 33.103(d)(4), interested parties may request an independent review at a level above the Contracting Officer as an alternative to consideration by the Contracting Officer. If a protest is silent on this matter, consideration and decision will be made by the Contracting Officer.

(End of Clause)

■ 83. Revise section 3452.239–70 to read as follows:

3452.239–70 Internet Protocol version 6 (IPv6).

As prescribed in 3439.701, insert the following clause in all solicitations and resulting contracts for hardware and software:

Internet Protocol Version 6 (Date)

(a) Any system hardware, software, firmware, or networked component (voice, video, or data) developed, procured, or acquired in support or performance of this contract shall be capable of transmitting, receiving, processing, forwarding, and storing digital information across system boundaries utilizing the next-generation internet Protocol (IP) version 6 (IPv6) as defined in revised USGv6 profile (most recent version of NIST Special Publication 500–267B) and

NISTv6 profile (most recent version of NIST Special Publication 500–267A).

(b) Specifically, any new IP product or system developed, acquired, or produced must—

(1) Provide IPv6 technical capabilities as outlined in the most recent version of USGv6 Capabilities Table (UCT);

(2) Maintain interoperability with both IPv6 and any existing IPv4 systems and products; and

(3) Have available Contractor/vendor IPv6 technical support for development and implementation and fielded product management.

(c) Any exceptions to the use of IPv6 require the agency's CIO to give advance, written approval.

(End of Clause)

■ 84. Revise section 3452.239–71 to read as follows:

3452.239–71 Department information security and privacy requirements.

As prescribed in 3439.702, include the following clause in all solicitations and contracts.

Department Information Security and Privacy Requirements (Date)

(a) The Contractor shall, at all times, maintain compliance with the most current version of Department security requirements as set forth in "Department Information Security and Privacy Requirements." These requirements are posted at <http://www.ed.gov/fund/contract/about/bsp.html>.

(b) The Contractor shall incorporate the substance of this clause, its terms and requirements, including this paragraph, in all subcontracts, and require written subcontractor acknowledgement of the same. Violation by a subcontractor of any provision

set forth in this clause will be attributed to the Contractor.

(c) Failure to comply with this clause, including the embedded Department Information Security and Privacy Requirements, may result in a termination of the contract for default or cause.

(d) Performance of this contract [] does include [] does not include the following: access to, collection of, or maintenance of information on behalf of the Department; or Department information technology (IT) products, systems, or hardware that are (1) used or operated by the Contractor on behalf of the Department, or (2) used in the performance of services or the furnishing of products. IT products, systems, hardware, and services include agency-hosted, outsourced, and cloud-based solutions, as well as incidental IT equipment that is acquired by the Contractor to support contract performance. When "does include" is selected, the categorizations shown below apply:

(1) In accordance with the Federal Information Processing Standard (FIPS 199), Standards for Security Categorization of Federal Information and Information Systems, the Information Security Categorization applicable to each security objective has been determined to be:

Confidentiality: [] Low [] Moderate [] High
Integrity: [] Low [] Moderate [] High
Availability: [] Low [] Moderate [] High
Overall Risk Level: [] Low [] Moderate [] High

(2) Performance of this contract [] does involve [] does not involve Personally Identifiable information (PII) as defined in OMB A–130 (2016).

(3) Performance of this contract [] does involve [] does not involve "Controlled

Unclassified Information” as defined in 32 CFR 2002.4(h).

(End of Clause)

3452.239–72 [Removed]

- 85. Remove section 3452.239–72.

3452.239–73 [Removed]

- 86. Remove section 3452.239–73.
- 87. Revise section 3452.243–70 to read as follows:

3452.243–70 Key personnel.

As prescribed in 3443.107, insert a clause substantially the same as the following in all solicitations and resultant contracts in which it will be

essential for the Contracting Officer to be notified that a change of designated key personnel is to take place by the contractor:

Key Personnel (Date)

(a) The personnel designated as key personnel in this contract are considered to be essential to the work being performed hereunder. Prior to diverting any of the specified individuals to other programs, or otherwise substituting any other personnel for specified personnel, the Contractor shall notify the Contracting Officer reasonably in advance and submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the contract effort. No diversion or substitution

shall be made by the Contractor without written consent of the Contracting Officer; provided, that the Contracting Officer may ratify a diversion or substitution in writing and that ratification shall constitute the consent of the Contracting Officer required by this clause. The contract shall be modified to reflect the addition or deletion of key personnel.

(b) The following personnel have been identified as Key Personnel in the performance of this contract:

Labor category Name
[Insert category.] [Insert name.]

(End of Clause)

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